

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

David Rus,
Appellant,

v.

Polk County Board of Review,
Appellee.

ORDER

Docket No. 13-77-0707
Parcel No. 100/13328-000-000

On January 24, 2014, the above-captioned appeal came on for consideration before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) (2013) and Iowa Administrative Code rules 701-71.21(1) et al. Appellant David Rus was self-represented and requested his appeal proceed without a hearing. Assistant County Attorney David Hibbard represent the Board of Review. The Appeal Board now, having examined the entire record and being fully advised, finds:

Findings of Fact

David Rus is the owner of residentially classified property located at 1507 46th Street, Des Moines, Iowa. He protested the January 1, 2013, assessment of \$144,900, representing \$24,000 in land value and \$120,900 in improvement value, to the Board of Review on the ground that the assessment was not equitable as compared with the assessments of other like property under Iowa Code section 441.37(1)(a)(1). Rus also provided the first page of a purchase agreement, a HUD settlement statement, and an Appraisal Update/Completion report. Essentially, this evidence also asserted Rus' property was assessed for than authorized by law under section 441.37(1)(a)(2). The Board of Review denied the protest.

Rus then appealed to this Board reasserting his claims. He believes the correct value of the subject property is \$100,000.

According to the property record card, the subject is two-story home built in 1920. It has 1866 square feet of above-grade living area and a 768-square-foot unfinished basement. The property also has a patio, a deck, and a 280-square-foot detached garage built in 1929. The subject site is 0.161 acres.

On his protest to the Board of Review, Rus listed the addresses and assessments of three properties he considered as equity comparables. The assessments range from \$97,900 to \$111,700. He did not submit any additional information about these properties. Ultimately, it is not necessary to determine if the properties Rus submitted are sufficiently comparable to his, as there is no evidence that any of them recently sold in an arm's-length transaction. An equity analysis typically compares *prior year sale prices* (2012 sales) or established market values to the *current year's assessment* (2013 assessment) to determine the assessment/sales ratio. Absent this evidence, Rus would otherwise need to provide evidence to show the Assessor did not uniformly apply assessment methods to the subject property and other similar properties, which he did not.

In further support of his claims, Rus submitted the first page of a purchase agreement. It identifies an offer to purchase the subject property from Fannie Mae for \$100,000. He also provided the first page of a settlement statement indicating a contract sales price of \$100,000. Because these documents are incomplete, and because the sales price of a property alone is not conclusive evidence of the market value, we give them no consideration. Further, we note the sales price was the result of a foreclosure, and the seller of the property was a government agency. As such, the sale would not be considered an arm's-length transaction for assessment purposes.

Rus also submitted a copy of an Appraisal Completion Report (ACR), completed by Wendy Wysong of Rels Valuation, Des Moines, Iowa. The report simply identifies that repairs or "improvements have been made to the subject property, in accordance with the requirements and

conditions stated in the original appraisal report.” The ACR does not provide the conclusions of the original appraisal report; and therefore, we give it no consideration.

At our request, Rus submitted a copy of the mortgage appraisal Wysong completed, which was done for Wells Fargo Home Mortgage for the purchase of the subject property. Wysong developed the sales comparison and cost approaches to value and concluded a value of \$100,000, for the subject property as of August 8, 2012.

Wysong included three comparable sales and two active listing of similar age and style properties in her sales analysis. The sales occurred between April 2012 and June 2012. After adjusting for differences, Wysong determines a range of value between \$85,500 and \$115,500. The listings indicated a value of roughly \$113,000 to \$114,500. Wysong identified Sale #1 as a Real Estate Owned (REO) property. She did not make adjustments for this condition. Wysong reports an investor purchased Sale #2 in February 2012 for \$52,000, from an estate. The investor then re-sold the property in May 2012. This was a cash sale, which could have an impact on the sales price. Sale #3 is listed as an arm’s-length sale. Wysong reports it was purchased from foreclosure in August 2011, updated, and “flipped” by an investor. Wysong gave the sales the most weight, and essentially relied on Sale #1, an REO sale, by selecting the middle of the sales range to set the subject’s value.

Polk County Deputy Assessor Paul Humble submitted a short rebuttal to the Wysong appraisal. He notes Sale #1 was an REO transaction and no adjustment was made for this condition. He notes there were no changes to Sale #2 between its February 2012 sale for \$52,000 and its re-sale approximately three months later for \$80,000. Wysong did not explain why the property increased in value by nearly \$30,000 over this short period. He further notes that although Sale #3 sold in March 2012 for \$120,000, it is currently listed for sale at \$127,000. Finally, Humble notes the listings Wysong used appear to have the list prices transposed. Humble provided the Multiple Listing Sheet (MLS) for both of these properties to support his assertion. The MLS sheets show the price and

information for the size and amenities is incorrect for each address. There are also other discrepancies between the features Wysong includes in her report and the MLS sheets for the listings.

Ultimately, because Wysong because it appears Wysong did not adequately verify information and relied on two questionable sales without making adjustments or providing other explanation, we do not rely on her opinion of value.

The Board of Review also submitted five properties it considered for an equity analysis. Like Rus' comparables, the record does not indicate any of the properties recently sold. Therefore, we give them no consideration.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply.

Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or

comparable properties in normal transactions are to be considered in arriving at market value. *Id.* In interpreting this provision, the Iowa Supreme Court has stated that while the sales price of a property may be evidence of its market value, the sales price *alone* is not determinative of the market value. *Riley v. Iowa City Bd. of Review*, 549 N.W.2d 289 (Iowa 1996). Rather, the subject property's sales price in a normal transaction is a matter to be considered in arriving at market value but does not *conclusively* establish the subject's market value. *Id.* at 290. If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 133 N.W.2d 709 (Iowa 1965). The six criteria include evidence showing

"(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination."

Id. at 579-580. The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied.

Rus' evidence did not establish inequity under either test. He failed to provide any sales information for comparable or similarly situated properties to complete an assessment/sales-ratio

analysis. Additionally, Rus did not assert the assessor applied an assessment method in a non-uniform manner to similarly situated properties. For these reasons, we find Rus has failed to provide sufficient evidence to support a claim that his property was inequitably assessed.

In an appeal alleging the property is assessed for more than the value authorized by law under section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

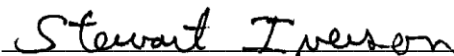
Rus submitted an appraisal from Wendy Wysong of Rels Valuation valuing the property at \$100,000 as of August 2012. However, one sale Wysong used was an REO, similar to a foreclosure, which is not arm's-length and there were no adjustments for this distorting factor. Another sale was a recent cash re-sale from an investor, with no evidence of changes to the property and no analysis of whether the cash transaction impacted the sales price. The remaining sale Wysong considered was an investor "flip" that sold for \$50,000 more than the investor purchased it for only seven months prior. Ultimately, we do not find Wysong's appraisal persuasive evidence of the property's market value as of the assessment date.

THE APPEAL BOARD ORDERS the assessment of the David Rus' property located at 1507 46th Street, Des Moines, Iowa, is affirmed with a total value of \$144,900 as of January 1, 2013.

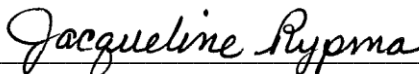
Dated this 27th day of February 2014.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

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